

REMARKS

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. The Office is respectfully requested to reconsider the rejections presented in the outstanding Office Action in light of the following remarks.

Claims 3 and 5 have been objected to, with the Office noting "population" should apparently be --visitors--. These claims have been rewritten as requested by the Office. Applicants intend no change in the scope of the claims by the changes made by these amendments. It should also be noted these amendments are not in acquiescence of the Office's position on allowability of the claims, but merely to expedite prosecution.

Claims 1 - 17 are also objected to, with the Office asserting throughout the claimed invention, "promotion" is treated as --advertisement--. This objection is not understood and if it is not withdrawn, clarification is respectfully requested. It is noted that the preamble of Claim 1 recited "promotion" and "promotion" elsewhere in the claim. Furthermore, the term "promotion" is used throughout the specification. Thus, it is not understood what is the basis of the objection.

Claims 1-17 were pending in the instant application at the time of the outstanding Office Action. Claims 1 is an independent claim; the other claims are dependent claims. Claims 1-17 stand rejected under 35 U.S.C. 102(e) as being anticipated by Robinson and also by Gerace. Claims Reconsideration and withdrawal of the present rejections is hereby respectfully requested.

The present invention broadly contemplates automatically generating marketing promotions for Internet websites based on real-time data obtained through controlled short-term experiments that determine market sensitivity. (Page 1, paragraph 3) The method and system of the present invention preferably allow merchants to modify the nature of the experiment and the propagation of optimal values. (Page 6, paragraph 20) The optimal promotion determined by the system is intended to optimize an economic value such as profit. The economic variable to be optimized may be financial, such as profit or revenue. Alternatively, the economic variable may be another quantity of interest, such as market share, customer satisfaction, customer retention at the website, or utilizing of manufacturing or shipping resources, for example. (Pages 15-16, paragraph 76) Indeed, in the example given on Page 22 of the application, incremental profit is being maximized, and the promotion which maximizes same is not the promotion that was accepted the most frequently.

As best understood, Robinson appears to be directed to displaying advertising to users of the World Wide Web based upon what "community" they are in. See Col. 2, lines 23-26 ("If the members of a particular consumer's community tend to click on a particular Web ad, then there is a certain likelihood that the subject consumer will also tend to click on that ad.") As such, the concept underlying Robinson appears to be to select an advertisement for display based solely upon the likelihood the advertisement will have the maximum possible click through rate.

As best understood, Gerace appears to be directed to targeting of an appropriate audience based on the psychographic or behavioral profiles of end users. Using the

profile, advertisements are displayed to appropriately selected users. (Abstract) Again; the concept underlying Gerace appears to appears to be to select an advertisement for display based solely upon the likelihood the advertisement will have the maximum possible click through rate. See Office Action at 7 (“[T]he system complies statistical reports that show the success or the failure of a particular ad campaign. It is further understood here if, at the end of the campaign, a particular ad was not viewed by a **minimum number of viewers** as agreed upon, the owner of the distribution medium might have to credit the advertiser or sponsor accordingly or continue to display the ad at no cost to the advertiser or sponsor until the required minimum number of viewers viewing the ad is met.” (emphasis added)

As amended, Independent Claim 1 recites (a) receiving configuration data from the Internet merchant; (b) randomly sampling visitors to the Internet website according to the configuration data; (c) determining a promotion using the data acquired in step (b), wherein the determined promotion optimizes at least one economic variable selected from a group of economic variables; and (d) displaying the optimal promotion to the Internet merchant. (emphasis added) At a minimum, both Robinson and Gerace lack these features and there is no disclosure of “optimiz[ing] at least one economic variable selected from a group of economic variables”. Rather, the applied art seeks to merely optimize the click through rate for advertising.

Accordingly, Applicants respectfully submit that the applied art does not anticipate the present invention because, at the very least, “[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under construction.”

W.L. Fore & Associates, Inc. v. Garlock, 721 F.2d 1540, 1554 (Fed. Cir. 1983); see also
In re Marshall, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978).

In view of the foregoing, it is respectfully submitted that Claim 1 fully distinguishes over the applied art and is thus in condition for allowance. By virtue of dependence from what are believed to be allowable independent Claim 1, it is respectfully submitted that Claims 2-17 are also presently allowable.

The "prior art made of record" has been review. Applicants acknowledge that such prior art was not deemed by the Office to be sufficiently relevant as to have applied against the claims of the instant application. To the extent that the Office may apply such art against the claims in the future, Applicants will be fully prepared to respond thereto.

In summary, it is respectfully submitted that the instant application, including Claims 1-17, are presently in condition for allowance. Notice to the effect is hereby earnestly solicited.

/

/

/

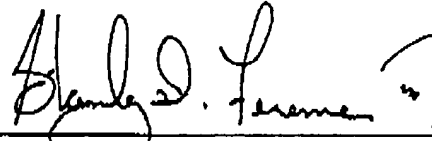
/

/

/

Applicants' undersigned attorney would welcomes further discussion with the
Office in the event there are any further issues in this application.

Respectfully submitted,



Stanley D. Ference III

Registration No. 33,879

Customer No. 35195
ERENCE & ASSOCIATES
409 Broad Street
Pittsburgh, Pennsylvania 15143
(412) 741-8400
(412) 741-9292 - Facsimile

Attorneys for Applicants